

Amend Section 33-130 to read:

Post-hearing: Amend Section 33-130(a)(8)(C) to read:

33-130 DEFINITIONS

33-130

The following definitions apply throughout this Division.

- (a) (1) "Abandonment" (Continued)
- (2) "Abduction" (Continued)
- (3) "Abuse of an elder or dependent adult" as defined in Section 15610.07 of the Welfare and Institutions Code.

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- (A) Section 15610.07 of the Welfare and Institutions Code states:

"Abuse of an elder or a dependent adult' means ~~either~~ any of the following:

- "(a) Physical abuse, neglect, ~~financial abuse~~, abandonment, isolation, abduction, or other treatment with resulting physical harm or pain or mental suffering.
- "(b) The deprivation by a care custodian of goods or services that are necessary to avoid physical harm or mental suffering."

"(c) Financial abuse as defined in Section 15610.30."

HANDBOOK ENDS HERE

- (B) "Neglect" (Continued)
- (4) "Adult day health center" (Continued)
- (5) "Adult protective services (APS)" as defined in Section 15760 of the Welfare and Institutions Code.

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- (A) Section 15760 of the Welfare and Institutions Code states:

~~"Notwithstanding Section 15753, a~~Adult protective services shall include investigations, needs assessments, remedial, ~~and~~ preventative social work activities, ~~and~~ the necessary tangible

resources such as food, transportation, emergency shelter, and in-home protective care, the use of multidisciplinary teams, and a system in which reporting of abuse can occur on a 24-hour basis."

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- (6) "Adult protective services agency" (Continued)
- (7) "Adult protective services program," for the purpose of this division, means the "adult protective services system" as described in Section 15750¹ of the Welfare and Institutions Code.

HANDBOOK BEGINS HERE

- (A) Section 15750¹ of the Welfare and Institutions Code states:

"Each county welfare department shall establish and support a system of protective services to elderly and dependent adults who may be subjected to neglect, abuse, or exploitation or who are unable to protect their own interest.

"This system shall be known as the county adult protective services system."

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- (8) "Adult protective services worker" means a county merit system civil service or county civil service employee who performs one or more of the following adult protective services functions:
 - (A) Investigating allegations of elder and dependent adult abuse; or,
 - (B) Performing case management activities, and the delivery of services, either directly or indirectly, relating to elder and dependent adult abuse cases.
 - (C) Second-year interns in a Bachelor's of Social Work or **interns in a Master's program in social work or a related field** may perform the duties of an APS worker under close supervision. However, they are not to be counted as APS workers in any work force or quality assurance metric.

- (9) "Assessment" (Continued)

- (b) Reserved

- (c) (1) "Care custodian" as defined in Section 15610.17 of the Welfare and Institutions Code.

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- (A) Section 15610.17 of the Welfare and Institutions Code states:

"Care custodian" means an administrator or an employee of any of the following public or private facilities or agencies, or persons providing care or services for elders or dependent adults, including members of the support staff and maintenance staff:

"(a) through (t) (Continued)

"(u) Any protection or advocacy agency or entity that is designated by the Governor to fulfill the requirements and assurances of the following:

"(1) The federal Developmental Disability Assistance and Bill of Rights Act, ~~as amended, contained in Chapter 75 (commencing with Section 6000) of 2000,~~ contained in Chapter 144 (commencing with Section 15001) of Title 42 of the United States Code, for protection and advocacy of the rights of persons with developmental disabilities.

"(2) (Continued)

"(v) Humane societies and animal control agencies.

"(w) Fire departments.

"(x) Offices of environmental health and building code enforcement.

"(y) Any other protective, public, sectarian, mental health, or private assistance or advocacy agency or person providing health services or social services to elders or dependent adults."

HANDBOOK ENDS HERE

- (2) "Case record" (Continued)

- (3) "Clergy member" as specified in Section 15610.19 of the Welfare and Institutions Code, means a priest, minister, rabbi, religious practitioner, or similar functionary of a church, synagogue, temple, mosque, or recognized religious denomination or organization. "Clergy member" does

not include unpaid volunteers whose principal occupation or vocation does not involve active or ordained ministry in a church, synagogue, temple, mosque or recognized religious denomination or organization, and who periodically visit elder or dependent adults on behalf of that church, synagogue, temple, mosque, or recognized religious denomination or organization.

(34) "Client" (Continued)

(45) "Community care facility" as defined in Sections 1502(a)(1), (2), and (7) of the Health and Safety Code means a facility licensed by the Department's Community Care Licensing Division including, but not limited to, an adult day care facility, social rehabilitation facility, or ~~adult day support center as defined in Section 1502.2 of the Health and Safety Code,~~ and adult residential facility as defined in Section 80001(a-)(75) of Division 6 of Title 22 of the California Code of Regulations.

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(A) Sections 1502(a)(1), (2), and (7) of the Health and Safety Code state in part: (Continued)

(B) ~~Section 1502.2 of the Health and Safety Code states in part:~~

~~"...a 'community care facility' pursuant to Section 1502 includes a adult day support center. A 'adult day support center' means a community-based group program designed to meet the needs of functionally impaired adults through an individual plan of care in a structured comprehensive program that provides a variety of social and related support services in a protective setting on less than a 24-hour basis."~~

(GB) Section 80001(a-)(75) of Division 6 of Title 22 of the California Code of Regulations states: (Continued)

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(56) "Criminal activity" (Continued)

(67) "Crisis in an existing case" (Continued)

(78) "Cross report" (Continued)

(d) (1) "Dependent adult" as defined in Section 15610.23 of the Welfare and Institutions Code.

HANDBOOK BEGINS HERE

(A) Section 15610.23 of the Welfare and Institutions Code states:

"(a) 'Dependent adult' means any person ~~residing in this state~~, between the ages of 18 and 64 years, who resides in this state and who has physical or mental limitations that restrict his or her ability to carry out normal activities or to protect his or her rights including, but not limited to, persons who have physical or developmental disabilities or whose physical or mental abilities have diminished because of age.

"(b) (Continued)

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(e) through (k) (Continued)

(l) (1) "Licensing agency" (Continued)

(2) "Local law enforcement agency" (Continued)

(3) "Long-term care facility" as defined in Section 15610.47 of the Welfare and Institutions Code.

HANDBOOK BEGINS HERE

(A) Section 15610.47 of the Welfare and Institutions Code states:
(Continued)

(B) Section 1569.2 of the Health and Safety Code states in part:

"~~(k)~~(1) 'Residential care facility for the elderly' (Continued)

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(4) "Long-term care ombudsman" as defined in Section 15610.50 of the Welfare and Institutions Code.

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(A) Section 15610.50 of the Welfare and Institutions Code states:

"Long-term care ombudsman" means the State Long-Term Care Ombudsman, local ombudsman coordinators, and other persons currently certified as ombudsmen by the Department of Aging as described in Chapter 911 (commencing with Section 9700) of Division 8.5."

HANDBOOK ENDS HERE

- (5) "Long-term health care facility" as defined in Section 1418(a) of the Health and Safety Code.

HANDBOOK BEGINS HERE

- (A) Section 1418(a) of the Health and Safety Code states in part:

"As used in this chapter:

"(a) 'Long-term health care facility' means any facility licensed pursuant to Chapter 2 (commencing with Section 1250) that is any of the following:

"(1) through (7) (Continued)

"(8) Intermediate care facility/developmentally disabled-continuous nursing."

HANDBOOK ENDS HERE

- (m) (1) "Mandated reporter" as defined in Section 15630(a) of the Welfare and Institutions Code.

HANDBOOK BEGINS HERE

- (A) Section 15630(a) of the Welfare and Institutions Code states:

"Any person who has assumed full or intermittent responsibility for care or custody of an elder or dependent adult, whether or not ~~that person~~ he or she receives compensation, including administrators, supervisors, and any licensed staff of a public or private facility that provides care or services for elder or dependent adults, or any elder or dependent adult care custodian, health practitioner, clergy member, or employee of a county adult protective services agency or a local law enforcement agency is a mandated reporter."

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- (2) "Mandated reporter of suspected financial abuse of an elder or dependent adult" means all officers and employees of financial institutions as defined in 15630.1 of the Welfare and Institution Code.

HANDBOOK BEGINS HERE

(A) Section 15630.1 of the Welfare and Institutions Code states:

"(a) As used in this section, 'mandated reporter of suspected financial abuse of an elder or dependent adult' means all officers and employees of financial institutions.

"(b) As used in this section, the term 'financial institution' means any of the following:

"(1) A depository institution as defined in Section 3(c) of the Federal Deposit Insurance Act (12 U.S.C. Sec. 1813(c)).

"(2) An institution-affiliated party, as defined in Section 3(u) of the Federal Deposit Insurance Act (12 U.S.C. Sec. 1813(u)).

"(3) A federal credit union or state credit union, as defined in Section 101 of the Federal Credit Union Act (12 U.S.C. Sec. 1752), including, but not limited to, an institution-affiliated party of a credit union, as defined in Section 206(r) of the Federal Credit Union Act (12 U.S.C. Sec. 1786(r)).

"(c) As used in this section, 'financial abuse' has the same meaning as in Section 15610.30.

"(d) (1) Any mandated reporter of suspected financial abuse of an elder or dependent adult who has direct contact with the elder or dependent adult or who reviews or approves the elder or dependent adult's financial documents, records, or transactions, in connection with providing financial services with respect to an elder or dependent adult, and who, within the scope of his or her employment or professional practice, has observed or has knowledge of an incident, this is directly related to the transaction or matter that is within that scope of employment or professional practice, has observed or has knowledge of an incident, that is directly related to the transaction or matter that is within that scope of employment or professional practice, that reasonably appears to be financial abuse, or who reasonably suspects that abuse, based solely on the information before him or her at the time of reviewing or approving the document, record, or transaction in the case of

mandated reporters who do not have direct contact with the elder or dependent adult, shall report the known or suspected instance of financial abuse by telephone or through a confidential Internet reporting tool, as authorized pursuant to Section 15658, immediately, or as soon as practicably possible. If reported by telephone, a written report shall be sent, or an Internet report shall be made through the confidential reporting tool established in Section 15658, within two working days to the local adult protective services agency or the local law enforcement agency.

"(2) When two or more mandated reporters jointly have knowledge or reasonable suspect that financial abuse of an elder or a dependent adult for which the report is mandated has occurred, and when there is an agreement among them, the telephone report or Internet report, as authorized by Section 15658, may be made by a member of the reporting team who is selected by mutual agreement. A single report may be made and signed by the selected member of the reporting team. Any member of the team who has knowledge that the member designated to report has dialed to do so shall thereafter make that report.

"(3) If the mandated reporter knows that the elder or dependent adult resides in a long-term care facility, as defined in Section 15610.47, the report shall be made to the local ombudsman or local law enforcement agency.

"(e) An allegation by the elder or dependent adult, or any other person, that financial abuse has occurred is not sufficient to trigger the reporting requirement under this section if both of the following conditions are not met:

"(1) The mandated reporter of suspected financial abuse of an elder or dependent adult is aware of no other corroborating or independent evidence of the alleged financial abuse of an elder or dependent adult. The mandated reporter of suspected financial abuse of an elder or dependent adult is not required to investigate any accusations.

"(2) In the exercise of his or her professional judgment, the mandated reporter of suspected financial abuse of an elder or dependent adult reasonably believes that

financial abuse of an elder or disable adult did not occur.

"(f) Failure to report financial abuse under this section shall be subject to a ciil penalty not exceeding one thousand dollars (\$1,000) or if the failure to report is willful, a civil penalty not exceeding five thousand dollars (\$5,000), which shall be paid by the financial institution that is the employer of the mandated reporter to the party bringing the action. Subdivision (h) of Section 15630 shall not apply to violating of this action.

"(g) (1) The civil penalty provided for in subdivision (f) shall be recovered only in a civil action brought against the financial institution by the Attorney General, district attorney, or county counsel. No action shall be brought under this section by any person other than the Attorney General, district attorney, or county counsel. Multiple actions for the civil penalty may not be brought for the same violation.

"(2) Nothing in the Financial Elder Abuse Reporting Act of 2005 shall be construed to limit, expand, or otherwise modify any civil liability or remedy that may exist under this or any other law.

"(h) As used in this section, 'suspected financial abuse of an elder or dependent adult' occurs when a person who is required to report under subdivision (a) observes or has knowledge of behavior or unusual circumstances or transactions, or a pattern of behavior or unusual circumstances or transactions, that would lead an individual with like training or experience, based on the same facts, to form a reasonable belief that an elder or dependent adult is the victim of financial abuse as defined in Section 15610.30.

"(i) Reports of suspected financial abuse of an elder or dependent adult made by an employee or officer of a financial institution pursuant to this section are covered under subdivision (b) of Section 47 of the Civil Code."

HANDBOOK ENDS HERE

(23) "Mental suffering" (Continued)

(34) "Multidisciplinary personnel team" as defined in Section 15610.55 of the Welfare and Institutions Code.

HANDBOOK BEGINS HERE

(A) Section 15610.55 of the Welfare and Institutions Code states:

"(a) 'Multidisciplinary personnel team' (Continued)

"(b) A multidisciplinary personnel team may include, but is not limited to, all of the following:

(1) through (4) (Continued)

"(5) Public guardians."

"(6) The local long-term care ombudsman.

"(7) Child welfare services personnel."

HANDBOOK ENDS HERE

(n) (1) "Neglect" as defined in Section 15610.57 of the Welfare and Institutions Code.

HANDBOOK BEGINS HERE

(A) Section 15610.57 of the Welfare and Institutions Code states:

"(a) 'Neglect' means either of the following:

"(1) (Continued)

"(2) The negligent failure of ~~the person themselves~~ an elder or dependent adult to exercise that degree of care that a reasonable person in a like situation would exercise.

"(b) Neglect includes, but is not limited to, all of the following:

(1) through (4) (Continued)

"(5) Failure of ~~a person~~ an elder or dependent adult to ~~provide~~ satisfy the needs specified in paragraphs (1) to (4), inclusive, for ~~themselves due to ignorance, illiteracy, incompetence,~~ himself or herself as a result of poor cognitive functioning, mental limitation, substance abuse, or poor health."

HANDBOOK ENDS HERE

(o) Reserved

(p) (1) "Physical abuse" as defined in Section 15610.63 of the Welfare and Institutions Code.

HANDBOOK BEGINS HERE

(A) Section 15610.63 of the Welfare and Institutions Code states:

"Physical' abuse means any of the following:

(a) through (d) (Continued)

"(e) Sexual assault, that means any of the following:

(1) through (8) (Continued)

"(9) Lewd or lascivious acts as defined in paragraph (2) of subdivision (b) of Section 288 of the Penal Code."

"(f) (Continued)

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(2) (Continued)

(q) and (r) (Continued)

(s) (1) "Serious bodily injury" as defined in Section 15610.67 of the Welfare and Institutions Code.

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"Serious bodily injury" means an injury involving extreme physical pain, substantial risk of death, or protracted loss or impairment of function of a bodily member, organ, or of mental faculty, or requiring medical intervention, including, but not limited to, hospitalization, surgery, or physical rehabilitation.

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(42) "State developmental center" (Continued)

(23) "State hospital" (Continued)

(t) Reserved

(u) Reserved

- (1) "Undue influence" as defined in Section 15610.70 of the Welfare and Institutions Code.

HANDBOOK BEGINS HERE

- (A) Section 15610.70 of the Welfare and Institutions Code states:

"(a) 'Undue influence' means excessive persuasion that causes another person to act or refrain from acting by overcoming that person's free will and results in inequity. In determining whether a result was produced by undue influence, all of the following shall be considered:

"(1) The vulnerability of the victim. Evidence of vulnerability may include, but is not limited to, incapacity, illness, disability, injury, age, education, impaired cognitive function, emotional distress, isolation, or dependency, and whether the influencer knew or should have known of the alleged victim's vulnerability.

"(2) The influencer's apparent authority. Evidence of apparent authority may include, but is not limited to, status as a fiduciary, family member, care provider, health care professional, legal professional, spiritual adviser, expert, or other qualification.

"(3) The actions or tactics used by the influencer. Evidence of actions or tactics used may include, but is not limited to, all of the following:

"(A) Controlling necessities of life, medication, the victim's interactions with others, access to information, or sleep.

"(B) Use of affection, intimidation, or coercion.

"(C) Initiation of changes in personal or property rights, use of haste or secrecy in effecting those changes, effecting changes at inappropriate times and places, and claims of expertise in effecting changes.

"(4) The equity of the result. Evidence of the equity of the result may include, but is not limited to, the economic consequences to the victim, any divergence from the victim's prior intent or course of conduct or dealing, the relationship of the value conveyed to the value of

any services or consideration received, or the appropriateness of the change in light of the length and nature of the relationship.

"(b) Evidence of an inequitable result, without more, is not sufficient to prove undue influence."

HANDBOOK ENDS HERE

(v) through (z) (Continued)

Authority cited: Sections 10553 and 10554, Welfare and Institutions Code and Senate Bill 2199 (Chapter 946, Statutes of 1998), Section 14 uncodified.

Reference: Sections 15610.05, 15610.06, 15610.07, 15610.13, 15610.17, 15610.23, 15610.27, 15610.30, 15610.40, 15610.43, 15610.45, 15610.47, 15610.50, 15610.53, 15610.55, 15610.57, 15610.63, 15610.65, 15610.67, 15610.70, 15630(a), 15630.1, ~~15750.1~~, 15760, and 15766, Welfare and Institutions Code; Sections 1204, 1250, 1400, 1418, 1502, 1502(a)(1), (2), and (7), 1502.2, 1568.02, 1569.2, 1570.7(b), 1575, 1726, 1747, 1760, and 11834.02, Health and Safety Code; and Section 368, Penal Code.